IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 12335 of 2007(R)

PETITIONER:

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1. ABDUL JABBAR,
   S/O.A.BAPPU SAHIB, BISMI MANZIL, COURT ROAD,
   ALATHUR.

2. B.KABEER,
   S/O.A.BAPPUR SAHIB, BISMI MANZIL,
   COURT ROAD, ALATHUR.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.S.LAKSHMY

RESPONDENTS:

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1. THE SPECIAL GRADE SECRETARY,
   ALATHUR GRAMA PANCHAYATH, ALATHUR.

2. ASSISTANT ENGINEER,
   ALATHUR GRAMA PANCHAYATH, ALATHUR.

3. VILLAGE OFFICER,
   ALATHUR.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN
GOVT.PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 12335 OF 2007

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Dated this the 8th day of August, 2007

JUDGMENT

Petitioners challenge Ext.P3 communication. Petitioners seek a direction to respondents 1 and 3 to approve the original of Ext.P2 plan without insisting for any unjustified conditions to enable them to make construction of a building in their property comprised in Re.Sy.Nos.344/8 and 344/17 of Alathur village.

Case of the petitioners in brief is as follows:

Petitioners are the joint owners in possession of a total extent of 39.500 cents. They submitted an application along with original of Ext.P2 pan to put up a building in the property comprised in Sy.No.344/8 and 344/7. Though the plan was in order and proposal was to construct a building only in their property and giving required clearances from all sides of the property, it was declined by the second respondent. It is stated that there is no hesitation in granting permission to construct a building to the neighbouring owner. The action impugned is

unfair and arbitrary, it is stated.

2. Counter affidavit is filed by respondents 1 and 2. Therein it is interalia stated that Ext.P3 only insists rectification of the mistakes in the plan submitted by the petitioner. Rule 7 A (iii) insists that name of any of the street, along which the building is proposed and its width which shall be the width in between the plot boundaries on the opposite sides has to be shown. According to the respondent, Ext.P3 plan does not state the width of the road in front of the proposed construction and the puramboke land belongs to the revenue lying in between the petitioner's land and the PWD road. It is the case of the respondent that the puramboke having a width of approximately 9 metres is included in the plan submitted by the petitioners. Ext.R1(a) is the extract from the Field Measurement Book maintained by the Alathur Taluk Office. It is stated that Panchayat is willing to consider the plan if the mistakes pointed out in Ext.P3 is rectified.

3. Detailed reply affidavit is filed by the petitioner producing Exts.P5, P5(a) and P6. Ext.P5 is the approved plan given to Shyamala and Ext.P5(a) is the approved plan given to

Chacko Jacob - another neighbour. It is interalia stated in the reply affidavit that petitioner could come to know that the first respondent had approved the building plans submitted by many of the immediate neighbouring landowners whose lands are also placed like that of petitioners'. It is stated that petitioners have approached the Village officer to obtain a survey plan of the site incorporating the description of the puramboke land if any available at the site, he was not prepared to give such a sketch. According to him, it is an unheard procedure. It is also stated that in none of the building plans submitted by the neighbouring land owners, the applicants have mentioned or shown any puramboke land or the road abutting their property. There is also denial of the allegation in the counter affidavit that there is puramboke land in between the petitioners' property and the public road. Ext.P6 sale deed is produced in support of the same.

4. I heard Learned counsel for the petitioners and the Learned counsel for the respondents also.

5. Counsel for the petitioners would reiterate the contentions in the writ petition and submits that plan is not being approved for extraneous reasons and it is pointed out that

similarly situated persons are given differential treatment. He would submit that Ext.P2 would show that petitioners have shown the name of the road as "Court road". He would further submit that petitioners will supply the width of the street in terms of Rule 7A. Learned counsel for the respondent would submit that if such width of the street as contemplated in Rule 7A is provided to the first respondent, first respondent will immediately take a decision without any delay.

In such circumstances, the writ petition is disposed of as follows:

If the petitioners provide the first respondent with the width of the street in terms of Rule 7A in respect of the proposed building, a decision will be taken by the first respondent in accordance with law within a period of two weeks from the date on which the said detail is provided.

(K.M.JOSEPH, JUDGE)

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